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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Federal-State Board on	)	CC Docket No. 96-45 (Report to Congress)
Universal Service	)	DA 98-2
	)	

**REPLY COMMENTS OF THE**  
**COMMERCIAL INTERNET EXCHANGE ASSOCIATION**

The Commercial Internet Exchange Association ("CIX"), by its attorneys, files these reply comments to address briefly several issues raised in the comments to the Commission for its Report to Congress.<sup>1</sup> First, the notion of treating some "information service" providers as "telecommunications carriers" is unwarranted. Second, subsidies for schools and libraries will primarily benefit the schools and libraries as intended, not the Internet service providers ("ISPs") or the telecommunications providers, and so it is best to allow the schools and libraries to choose among all market providers. Finally, the assertion that the development of the Internet will result in insufficient contributions to the USF and harm the furtherance of universal service is entirely speculative as the advent of new technologies bring vast services to a broad range of Americans in a manner previously not possible.

As the comments of CIX and others discussed at length, a provider of "information service" is not engaging in a "telecommunications service," nor is it a "telecommunications carrier." The terms of the 1996 Act and its legislative history explicitly recognize this critical distinction, which is fully consistent with the Commission's precedent. Some commenters,

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<sup>1</sup> Pursuant to 1998 appropriations legislation for the Departments of Commerce, Justice, and State, H.R. 2267, the Commission must make its report to Congress by April 10, 1998.

however, strain the plain statutory language to argue, in effect, that the definitional ambiguity of the terms "information service" and "telecommunications" could classify some providers of "information service" as "telecommunications carriers." As discussed in its comments, CIX believes that such a reading would violate the plain statutory definitions, and would also contradict the express intent of Congress to "*preserve*" the "*present*" competitive Internet market by leaving it "*unfettered*" by federal regulation (47 U.S.C. § 230(b)(2))(emphasis added).

In addition, the contention that some "information service" providers should be treated as "telecommunications carriers" asks for the Commission to embark on a massive regulatory morass. For example, it is unclear how the Commission would discern which industries (*e.g.*, pizza delivery businesses, travel agencies, or Internet providers) are properly considered to employ telecommunications in a manner that subjects them to "telecommunications carrier" status, while other industries that also employ telecommunications in their business are not. Ultimately, this regulatory machination would result in (a) significant interference in the marketing of services, (b) additional regulatory uncertainty and compliance costs for ISPs, and (c) promulgation of additional regulatory control over the Internet. While some would argue that Section 10 forbearance could undo the overregulation of the Internet, it is simply absurd to initiate and then dismantle a regulatory schema for the sole purpose of serving an untenable and impractical interpretation of statutory definitions.<sup>2</sup>

Second, the Commission's interpretation of Section 254(h) enures to benefit schools and libraries, and not, as some commentators have suggested, solely the telecommunications provider

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<sup>2</sup> At best, the notion (flatly wrong, in CIX's view) that "information service" and "telecommunications" overlap, is an *interpretation* of two separate statutory terms, is not grounded in the statutory language itself. Thus, the Commission's interpretation reconciling the two statutory definitions is subject to substantial deference under Chevron v. NRDC, Inc., 467 U.S. 837 (1984).

or the Internet service provider.<sup>3</sup> The subsidy may flow through the provider, but represents a savings to the school or library, not increased profits for the provider.<sup>4</sup>

Finally, speculative assertion that the Commission's approach on USF will not provide sufficient funding<sup>5</sup> is not justification for treating ISPs like telecommunications providers. Alternative technological options will provide a wider variety of services to significantly broader geographic areas. The broad array of innovative technologies being developed—including broadband, wireless, and satellite services—will change the allocation of funds required to provide Universal Service. These advances will also change the types of services that all citizens should have available to enjoy equal opportunities in the information age. To impose further expenses on ISPs will limit their ability to compete with emerging technologies that are entering into the Internet service business, and thus hinder innovation. Therefore, a new regulatory scheme premised on speculative concerns is not in the public interest.<sup>6</sup>

Consistent with the goals of the 1996 Act and with competition in the Internet market, ISPs offer Internet access for as little as \$20 a month, enabling many Americans to tap into the benefits of this new medium. To threaten this resource by subjecting ISPs to additional expenses, when in fact, they already pay their fair share for Universal Service as "end users" is unnecessary.

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<sup>3</sup> C.f., Comments of Airtouch Communications at 29.

<sup>4</sup> Comments of The Education and Library Networks Coalition at 4.

<sup>5</sup> Comments of Airtouch Communication at 3.

<sup>6</sup> Comments of Rural Telephone Coalition at 13. "It impedes the realization of the rural/urban rate and service comparability and similar access to advanced telecommunications and information services that undergrid the national universal service commitment enacted by Congress."

## Conclusion

CIX respectfully requests that the Commission consider the positions stated in our Comments and Reply Comments in its Report to Congress.

Respectfully submitted,

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